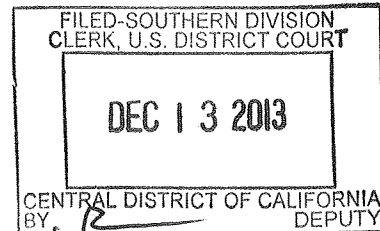


I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY *plaintiff*  
 FIRST CLASS MAIL POSTAGE PREPAID, TO ALL COUNSEL  
 (OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF  
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DATED: 12.13.13

DEPUTY CLERK



UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

PHILIP C. BIKLE,	)	Case No. SACV 13-1662-DOC (JPR)
	)	
Plaintiff,	)	
	)	ORDER DISMISSING COMPLAINT WITH
vs.	)	PREJUDICE
	)	
OFFICER A. SANTOS et al.,	)	
	)	
Defendants.	)	

This is Plaintiff's second civil rights lawsuit stemming from Los Angeles County Sheriff's Deputy A. Santos's issuance of a traffic citation to him. The Court dismissed the first such lawsuit on July 26, 2013, because it was frivolous and failed to state a claim against any of the named defendants. This one fares no better.

Plaintiff filed this action pro se on October 23, 2013. Just as with the first lawsuit, he alleges violations of 42 U.S.C. §§ 1983 and 1985(3) and relies on the Fourth, Fifth, and 14th amendments to the U.S. Constitution; this time around, he has also raised claims based on the Ninth Amendment as well as state-law fraud. (See Compl. ¶¶ 6, 75-89, 90-95.) He names as

*Doc*

1 defendants Deputy Santos, LASD Deputy Cathy Hayes, the LASD, the  
 2 County of Los Angeles, the City of Lakewood, and various Does.  
 3 He seeks injunctive relief "to halt all systemic actions of  
 4 denial of due process and the systematic and fraudulent  
 5 violations of the public right to travel on the right-of-ways,"  
 6 compensatory damages, and punitive damages. (Id. at 28-29.)

7 Because Plaintiff paid the full filing fee and is not a  
 8 prisoner, the Complaint is not subject to preservice screening  
 9 under 28 U.S.C. §§ 1915(e)(2) or 1915A. See Brown v. California,  
 10 No. EDCV 11-0707-SVW (MLG), 2011 WL 5827958, at \*1 (C.D. Cal. May  
 11 18, 2011), accepted by 2011 WL 5828717 (C.D. Cal. Nov. 18, 2011).  
 12 The Court may, however, sua sponte dismiss a frivolous, patently  
 13 insubstantial complaint for lack of subject matter jurisdiction  
 14 under Federal Rule of Civil Procedure 12(b)(1). See Neitzke v.  
 15 Williams, 490 U.S. 319, 327 n.6, 109 S. Ct. 1827, 1832 n.6, 104  
 16 L. Ed. 2d 338 (1989) (courts lack subject matter jurisdiction to  
 17 consider "patently insubstantial" complaints); see also Franklin  
 18 v. Murphy, 745 F.2d 1221, 1227 n.6 (9th Cir. 1984) ("A paid  
 19 complaint that is obviously frivolous does not confer federal  
 20 subject matter jurisdiction and may be dismissed sua sponte  
 21 before service of process." (citation and internal quotation  
 22 marks omitted)). A frivolous complaint "lacks an arguable basis  
 23 either in law or in fact." Neitzke, 490 U.S. at 325.

#### 24 ALLEGATIONS OF THE COMPLAINT

25 On October 24, 2011, Plaintiff was involved in a traffic  
 26 accident in the parking lot of the Hawaiian Gardens Casino.  
 27 (Compl. ¶ 16.) Defendant Santos responded to the scene and  
 28 proceeded to ask questions of Plaintiff and the other car's

1 driver. (Id. ¶ 20.) "At this point," Plaintiff "perceived  
2 [himself] to be under arrest and . . . not free to go." (Id.  
3 ¶ 21.) When Deputy Santos asked Plaintiff if he had a driver's  
4 license, Plaintiff responded that he did not because he "wasn't  
5 engaged in commerce transporting persons or property for hire,  
6 which invoked the statutory obligations of a license." (Id.  
7 ¶¶ 24-25.) Santos then copied the vehicle identification number  
8 off the inside of the driver's-side door of Plaintiff's truck.  
9 (Id. ¶ 29.) Santos gave Plaintiff a Notice to Appear because he  
10 did not have a driver's license, which Plaintiff signed "under  
11 duress" of being "taken into custodial arrest." (Id. ¶¶ 29, 37.)

12 On December 15, 2011, Defendant Hayes  
13 utilized the USPS to mail a document titled, 'Notice of  
14 Correction and Proof of Service' to Plaintiff. Officer  
15 Hayes invoked the name of the People of the State of  
16 California on the Notice of Correction such that it  
17 appeared prosecution had been initiated against  
18 Plaintiff.

19 (Id. ¶ 42.) Plaintiff makes a similar allegation against  
20 Defendant Santos, adding that he is "not licensed to practice  
21 law." (Id. ¶¶ 41, 47.) Plaintiff alleges that the Doe  
22 Defendants were all "employed at the Los Angeles Sheriff's  
23 Department" and took part in mailing or filing the Notice to  
24 Appear. (Id. ¶¶ 9, 43-44.)

25 Plaintiff alleges that Deputy Santos violated his Fourth  
26 Amendment rights by "falsely arresting" Plaintiff without  
27  
28

1 probable cause, requiring him to provide a thumbprint,<sup>1</sup> searching  
2 the inside door panel of Petitioner's truck "for the VIN without  
3 probable cause," and using the VIN "to perform additional  
4 searches via computer databases." (Id. ¶¶ 59, 66.) Deputy  
5 Santos allegedly violated Plaintiff's Ninth Amendment rights as  
6 well by restricting his right to travel. (Id. ¶¶ 75-84.)  
7 Plaintiff alleges that both Santos and Hayes committed "mail  
8 fraud" "by sending a communication via USPS mail which conveyed  
9 to the Plaintiff that prosecution of criminal charges had been  
10 initiated against him by the People of the State of California."  
11 (Id. ¶¶ 90-95.) He further sues all the individual Defendants  
12 under the Fifth Amendment for all their actions, which allegedly  
13 deprived him of due process (id. ¶¶ 101-06), as well as under  
14 § 1985(3) for conspiracy "to defraud persons who happen to get  
15 caught up in any alleged traffic related matter" (id. ¶ 114).

16 Finally, Plaintiff claims that the entity Defendants  
17 fostered "long standing, pervasive pattern[s] of lawlessness" in  
18 their employees as a result of inadequate training and  
19 supervision. (Id. ¶¶ 70-74, 85-89, 96-100, 108-11.)

#### 20 DISCUSSION

21 Plaintiff's Complaint is frivolous and fails to state a  
22 claim upon which relief might be granted. All his claims stem  
23 from the underlying premise that because he does not use his  
24 vehicle for commercial purposes, he is not required to have a  
25

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26 <sup>1</sup>California Penal Code § 853.5(a) provides that if an arrestee  
27 for a traffic infraction does not have a driver's license "or other  
28 satisfactory evidence of identity in his or her possession," the  
officer may require the arrestee to place a thumbprint on the  
Notice to Appear.

1 driver's license. (See id. ¶¶ 60-62.) The Ninth Circuit has  
2 rejected as frivolous a nearly identical § 1983 claim. In Ma'at-  
3 Ra v. Bateman, 234 F. App'x 514 (9th Cir. 2007), the Ninth  
4 Circuit adopted the "reasons set forth by the magistrate judge in  
5 his November 9, 2005 report, adopted in full by the district  
6 court," for rejecting the plaintiff's claims. Id. at 514. The  
7 Magistrate Judge found that Ma'at-Ra's claims, which stemmed in  
8 part from his failure to provide a driver's license when asked by  
9 a police officer who stopped him for a traffic infraction, were  
10 "frivolous" and failed to state a claim upon which relief might  
11 be granted. Ma'at-Ra v. Bateman, No. 2:03-cv-02508-R-AN, Report  
12 & Recommendation at 4, 8, 15 (C.D. Cal. Nov. 10, 2005), ECF No.  
13 103. Review of the briefing in Ma'at-Ra makes clear that Ma'at-  
14 Ra claimed, as does Plaintiff here, that he was not required to  
15 have a driver's license as long as he was not using the public  
16 highways "for profit or commercial purposes." Appellant's or  
17 Petitioner's Informal Brief ¶¶ 73, 75, Ma'at-Ra, 234 F. App'x 514  
18 (No. 05-56921), 2006 WL 2982067. The Ninth Circuit upheld the  
19 Magistrate Judge's finding that the claim was frivolous. The  
20 California courts have rejected similar arguments. See Olajide  
21 v. Cal. Dep't of Motor Vehicles, No. A133375, 2012 WL 893879  
22 (Cal. Ct. App. Mar. 16, 2012) (rejecting claim that Vehicle Code  
23 applies only to those "driving for the State of California or for  
24 any political subdivision thereof" or "for commercial purposes").

25 Plaintiff's Complaint suffers from other critical  
26 deficiencies in addition to its fatally flawed underlying  
27 premise.

28 He has not pleaded any facts to support a claim under

1 § 1985(3). (See Compl. ¶ 114.) Section 1985(3) prohibits  
2 conspiracies to deprive "any person or class of persons" of equal  
3 protection under the laws, equal privileges and immunities under  
4 the laws, or the right to vote. To state a claim under  
5 § 1985(3), a plaintiff must allege "(1) that some racial, or  
6 perhaps otherwise class-based, invidiously discriminatory animus  
7 lay behind the conspirators' action, and (2) that the conspiracy  
8 aimed at interfering with rights that are protected against  
9 private, as well as official, encroachment." Bray v. Alexandria  
10 Women's Health Clinic, 506 U.S. 263, 267-68, 113 S. Ct. 753, 758,  
11 122 L. Ed. 2d 34 (1993) (citations, alteration, and internal  
12 quotation marks omitted). "[T]he plaintiff must state specific  
13 facts to support the existence of the claimed conspiracy." Olsen  
14 v. Idaho State Bd. of Med., 363 F.3d 916, 929 (9th Cir. 2004)  
15 (internal quotation marks omitted).

16 To state a claim for conspiracy to violate his right to  
17 equal protection, Plaintiff must allege facts showing that he was  
18 intentionally treated differently from others similarly situated  
19 and that there was no rational basis for the difference in  
20 treatment. See Vill. of Willowbrook v. Olech, 528 U.S. 562, 564,  
21 120 S. Ct. 1073, 1074, 145 L. Ed. 2d 1060 (2000); see also Barren  
22 v. Harrington, 152 F.3d 1193, 1194-95 (9th Cir. 1998).

23 Conclusory allegations will not suffice. See Karim-Panahi v.  
24 L.A. Police Dep't, 839 F.2d 621, 626 (9th Cir. 1988) (affirming  
25 dismissal of § 1985(3) claim containing "legal conclusions but no  
26 specification of any facts to support the claim of conspiracy").  
27 Plaintiff alleges no facts whatsoever to satisfy any of the above  
28 requirements.



1 Plaintiff's Fifth Amendment claims (see Compl. ¶¶ 101-11)  
2 fail because "[t]he Due Process Clause of the Fifth Amendment and  
3 the equal protection component thereof apply only to actions of  
4 the federal government - not to those of state or local  
5 governments." Lee v. City of L.A., 250 F.3d 668, 687 (9th Cir.  
6 2001), overruled on other grounds as recognized by Galbraith v.  
7 Cnty. of Santa Clara, 307 F.3d 1119, 1125-26 (9th Cir. 2002).  
8 Plaintiff does not allege that any Defendant is a federal actor;  
9 indeed, they plainly are not.

10 Plaintiff's Ninth Amendment claims (see Compl. ¶¶ 75-84)  
11 fail because there is no fundamental constitutional right to  
12 drive a motor vehicle, see Miller v. Reed, 176 F.3d 1202, 1205-06  
13 (9th Cir. 1999), and in any event the Ninth Amendment does not  
14 "independently secur[e] any constitutional rights for purposes of  
15 making out a constitutional violation," Schowengerdt v. United  
16 States, 944 F.2d 483, 490 (9th Cir. 1991); Preskar v. United  
17 States, 248 F.R.D. 576, 586 (E.D. Cal. 2008) (recommending  
18 dismissal of § 1983 claims predicated on Ninth Amendment),  
19 accepted by 2008 WL 802925 (E.D. Cal. Mar. 24, 2008).

20 Finally, because Plaintiff's federal claims all must be  
21 dismissed, his state-law tort claims (Compl. ¶¶ 90-95) must be  
22 dismissed as well. A court may exercise supplemental  
23 jurisdiction over a state-law claim if a plaintiff raises a  
24 cognizable federal claim that is substantial enough to confer  
25 federal jurisdiction and shares a common nucleus of operative  
26 fact with the state claim. Brady v. Brown, 51 F.3d 810, 816 (9th  
27 Cir. 1995); see 28 U.S.C. § 1367. If the federal claim is  
28 dismissed before trial, the state claim should be dismissed as

1 well. United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726, 86  
2 S. Ct. 1130, 1139, 16 L. Ed. 2d 218 (1966). Here, because the  
3 Court dismisses all of Plaintiff's federal claims for failure to  
4 state a claim, his state-law tort claims must also be dismissed.

5 Because Plaintiff's Complaint is frivolous and its  
6 deficiencies clearly cannot be cured by amendment, the Court  
7 hereby ORDERS that the Complaint is dismissed with prejudice.

8  
9 DATED: November 11, 2013

David O. Carter  
DAVID O. CARTER  
U.S. DISTRICT JUDGE

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13 Presented by:

14  
15 **JEAN ROSENBLUTH**

16 Jean Rosenbluth  
U.S. Magistrate Judge  
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